

RD



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,778	04/20/2001	James N. Herron	3278.1US	3373
24247	7590	06/04/2004	EXAMINER	
TRASK BRITT			LAM, ANN Y	
P.O. BOX 2550			ART UNIT	
SALT LAKE CITY, UT 84110			PAPER NUMBER	
			1641	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/839,778

Applicant(s)

HERRON ET AL.

Examiner

Ann Y. Lam

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-21.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Christopher L. Chin*  
CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800-1641

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant argues that Jackowski does not expressly or inherently describe that multiple analytes of a sample may be substantially simultaneously evaluated (pages 7-8 of Applicant's response.) Applicant argues that the term "simultaneous" is not used to indicate that analysis of different analytes occurs concurrently, but that the analysis occurs within a given period of time (e.g., thirty minutes.) Examiner agrees that Jackowski uses the term "simultaneous" to indicate that the analysis must be done within a time frame but need not necessarily be done concurrently, (column 22, lines 6-9.) However, Examiner emphasizes that the term "simultaneous" as used by Jackowski encompasses the term concurrent since something done concurrently is done within a time frame. In other words, the term "simultaneous" does not necessarily mean concurrent, but encompasses the term concurrent. Examiner also points to column 8, line 59 - column 9, line 6, which states that the term "simultaneous" is intended to refer to the ability to achieve a diagnosis of chest pain within a shortened period, and therefore includes the measurement of the multiple analytes or markers within a single device having capabilities for conjoint detection and measurement, or by means of the use of individual such devices, each capable of detecting and indicating the presence and amount of a particular marker or analyte, provided that such detection and measurement are carried out within a period of time in which the detection and measurement of one analyte is meaningful with respect to the other analytes detected and measured. Thus, Examiner asserts that a method wherein a single device with the capabilities for conjoint detection and measurement, or individual devices measuring one marker within a period of time in which the detection and measurement of another marker is meaningful encompasses a method in which the markers are concurrently detected and measured, so long as it is within a shortened period of time and provides meaningful detection and measurement with respect to the detection and measurement of another marker. Examiner would also like to emphasize that Applicant claims "substantially simultaneous", which is broader than the term "simultaneous".